(18)

Supreme Court, U.S.
FILED
MAR 24 2003
OFFICE OF THE CLERK

NO. 02-1196

IN THE SUPREME COURT OF THE UNITED STATES

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

CHARLES E. EDWARDS

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CONSOLIDATED OBJECTION BY RESPONDENT TO THE MOTIONS OF *AMICI CURIAE* FOR LEAVE TO FILE BRIEFS IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

MICHAEL K. WOLENSKY
(Counsel Of Record)
ETHAN H. COHEN
LAURA J. SAURIOL
Kutak Rock LLP
225 Peachtree Street, N.E.
Suite 2100
Atlanta, GA 30303-1731
(404) 222-4600

Counsel for Respondent

6 11

Three motions have been filed in this case pursuant to United States Supreme Court Rule 37 seeking leave to file *amici* briefs in support of the Petition For a Writ of Certiorari. Respondent[1] withheld consent to the filing of the *amici* briefs because, as demonstrated by the attempted but unsuccessful (*see* Appendix A) filing by these same *amici* in the court of appeals in support of the Securities and Exchange Commission's (SEC) petition for rehearing and rehearing *en banc*, the views they express add heat but no light to the consideration of whether the Court should take this case. As the SEC is the primary entity charged with enforcing the federal securities laws, and it and the Solicitor General are more than adequately equipped to represent the federal and public interest here, it is unlikely the *amici* can offer original matter or expertise which would considerably assist the Court. Moreover, in attempting to demonstrate the importance of the case, each *amici*, as did the SEC (*see* Opp. at 11), mischaracterizes the issue in the case and the holding of the court of appeals.

Based on this skewed rendition of that holding, the *amici* variously complain that the court of appeals' decision permits or even actually promotes fraudulent or questionable investments that they may no longer be able to combat through their regulatory efforts and arbitrations. Despite

[1] Pursuant to Supreme Court Rule 29.6, Respondent Charles E. Edwards submits that he does not have any parent corporations or subsidiaries.

the expertise of the *amici* in interpreting their own controlling law and the undoubted value the *amici* provide to their respective constituencies, their views on the interpretation or application of *federal* law under the circumstances are not of particular value. They have also lost sight of the fact that "Congress in enacting the securities laws did not intend to provide a broad federal remedy for all fraud." *Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982). In short, securities regulations and securities regulators have no monopoly on combating fraud. If, in fact, the *amici* are correct that instruments not meeting the Court's "restrictive" definition of "profits" and "investment contract" are used by the unscrupulous as vehicles for fraud against consumers and the clients of the PIABA lawyers, there are numerous law enforcement actors, regulators and laws outside the securities arena to combat and deter such conduct. The views of the *amici*, grounded on the supposition that the securities laws must be broad enough to allow them to fight all fraud, will not bring new relevant matter to the attention of the Court.

The motions of *Amici Curiae* should be denied.

Respectfully submitted,

Michael K. Wolensky
(Counsel of Record)
Ethan H. Cohen
Laura Sauriol
Kutak Rock LLP
225 Peachtree Street, N.E.
Suite 2100
Atlanta, GA 30303-1731
(404) 222-4600

Counsel for Respondent

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 15 2002
THOMAS K. KAHN
CLERK

No. 01-10107-DD

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

versus

CHARLES E. EDWARDS,

Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia

---

O R D E R:

The motion for leave to file an amicus curiae brief, filed by North American Securities Administrators Association, Inc., is DENIED.

The motion for leave to file an amicus curiae brief, filed by Alabama Securities Commission, is DENIED.

The motion for leave to file an amicus curiae brief, filed by Public Investors Arbitration Bar Association, is DENIED.

The motion for leave to file an amicus curiae brief, filed by the State of Florida, Department of Banking and Finance, is DENIED.

The motion for leave to file an amicus curiae brief, filed by the Secretary of State and the Commissioner of Securities of the State of Georgia, is DENIED.

CHIEF JUDGE

APPENDIX A

CERTIFICATE OF SERVICE

I, Michael K. Wolensky, a member of the Bar of this Court, hereby certify that on the 20th day of March, 2003, a copy of this CONSOLIDATED OBJECTION BY RESPONDENT TO THE MOTIONS OF *AMICI CURIAE* FOR LEAVE TO FILE BRIEFS IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI in the above-entitled case was served on all parties required to be served by U.S. Mail, first class postage prepaid, to the following:

Solicitor General of the United States
Room 5614
Dept. of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Joseph C. Long, Esq.
Counsel for Public Investors
Arbitration Bar Association, Inc.
2609 Acacia Court
Norman, Oklahoma 73072

Mr. Mark J. Davis
North American Securities
Administrators Association, Inc.
Suite 710
10 G Street, NE
Washington, D.C. 20002

Cynthia K. Maynard, Esq.
Senior Attorney
State of Florida
Dept. of Financial Services
Office of Financial Institutions and
Securities Regulation
200 East Gaines Street
The Fletcher Bldg., Suite 526
Tallahassee, Florida 32399-0379

Michael K. Wolensky
Counsel of Record for Respondent